

Senate Resolution No. 7

Introduced by Senators Leno, Kehoe, Steinberg, Alquist, Calderon, Cedillo, Corbett, DeSaulnier, Hancock, Liu, Lowenthal, Pavley, Romero, Simitian, Wiggins, Wolk, and Yee

Relative to same-sex marriage

WHEREAS, Article XVIII of the California Constitution mandates distinct procedures for revision and amendment of the California Constitution; and

WHEREAS, Article XVIII provides that, while a proposed amendment to the California Constitution can be accomplished through the initiative process, a proposed revision of the California Constitution must originate in the Legislature and must be approved by a two-thirds vote of each house of the Legislature before being submitted to the electors; and

WHEREAS, The California Supreme Court, in *Livermore v. Waite* (1894) 102 Cal. 113 and subsequent decisions, has held that a revision is a substantial change to the “underlying principles” of the California Constitution or to the structure of our “basic governmental plan”; and

WHEREAS, Subdivision (a) of Section 8 of Article II of the California Constitution defines the initiative power as the ability to propose and pass statutory laws and constitutional amendments, but not constitutional revisions; and

WHEREAS, Article III of the California Constitution establishes a separation of powers between the legislative, executive, and judicial branches of California’s government; and

WHEREAS, Under the separation of powers doctrine established by Article III of the California Constitution, the courts have the ultimate authority to interpret and enforce the principle of equal protection, particularly where government discrimination on a suspect basis or the selective denial of a fundamental, inalienable right on a suspect basis is at issue; and

WHEREAS, The distinct procedures mandated for revision and amendment of the California Constitution, and the crucial deliberative

role of the Legislature in any proposed revision of our Constitution, constitute key structural checks in the system of checks and balances mandated by Article III of the California Constitution; and

WHEREAS, The distinction between revision and amendment, and the distinct procedures assigned to each, in Article XVIII of the California Constitution, as well as the separation of powers mandated by Article III, are entitled to the highest respect as the expression of the people's will; and

WHEREAS, The principle of equal protection, which prohibits unequal government treatment of historically targeted minority groups and ensures that laws enacted by a majority must apply equally to all people, is a foundational principle underlying our Constitution and our democratic system of government; and

WHEREAS, The requirement of equal protection of the laws plays an essential structural role in our basic governmental plan by providing a necessary check on the exercise of majority power and, in particular, by prohibiting the enactment of measures that facially single out a historically targeted minority group for adverse treatment and selective exclusion from an important right; and

WHEREAS, The Legislature is specially suited to examine and debate significant changes to the principles and structure that underlie the California Constitution, and is structured for precisely such a task; and

WHEREAS, Proposition 8, which was titled "Eliminates the right of same-sex couples to marry," was put forward as an initiative measure and enacted by the electors by a bare majority of the vote in the November 4, 2008 general election; and

WHEREAS, Proposition 8 purports to amend the California Constitution to eliminate a fundamental, inalienable right only for a particular minority group on the basis of a suspect classification, while permitting the majority to retain that fundamental, inalienable right; and

WHEREAS, Proposition 8 would severely undermine the foundational principle of equal protection by establishing that any disfavored minority can be targeted to have its fundamental rights stripped away by a simple majority vote; and

WHEREAS, Proposition 8 would substantially alter our basic governmental plan by eliminating equal protection as a structural check on the exercise of majority power and by permitting majorities to force groups defined by suspect classifications to fight to protect their

fundamental rights under the California Constitution at every election;
and

WHEREAS, Proposition 8 would violate the separation of powers doctrine by stripping the courts of their core, constitutionally mandated function and traditional authority to enforce equal protection to prevent government discrimination against minority groups and the selective denial of fundamental, inalienable rights on suspect bases; and

WHEREAS, Proposition 8 would also violate the separation of powers doctrine by intruding on the vital role of the Legislature in vetting revisions to the California Constitution and by sidestepping the constitutionally required rigors of the legislative process; now, therefore, be it

Resolved by the Senate of the State of California, That the Senate opposes Proposition 8 because it is an improper revision, not an amendment, of the California Constitution and was not enacted according to the procedures required by Article XVIII of the California Constitution; and be it further

Resolved, that the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

Senate Resolution No. 7 read and adopted by the Senate March 2, 2009.

Attest: _____
Secretary of the Senate